

THE HONORABLE RONALD B. LEIGHTON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TROY X. KELLEY,

Defendant.

Case No. 3:15-cr-05198-RBL

DEFENDANT'S MOTION TO DELAY
INTRODUCTION OF OLD REPUBLIC
TITLE WITNESSES

I. INTRODUCTION

Defendant Troy Kelley moves for an order delaying the government's presentation of witnesses involved in Old Republic's decision to refund some of the proceeds it received in settlement from Mr. Kelley until after production by Old Republic of documents relating to that decision. In the alternative, Mr. Kelley requests that this Court require production of those documents by Tuesday, March 22, 2016. Mr. Kelley needs these documents to do a complete and effective cross-examination of Old Republic witnesses on decisions relating to distribution of the settlement proceeds. Consequently, Mr. Kelley should be allowed to receive and review these documents prior to the government's presentation of any Old Republic witnesses involved in the decision.

II. DISCUSSION

This morning, in response to a motion by Mr. Kelley, the Court ordered the production of about 60 documents, in redacted form, that Old Republic had previously designated as privileged. Dkt. No. 251. As the Court is aware from its *in camera* review, these documents relate to Old Republic's efforts to return to its customers a portion of the settlement proceeds from the *Old Republic v. Kelley* case. These documents are relevant to Mr. Kelley's defense because Old Republic's decision not to refund a majority of the allegedly stolen money casts doubt on the government's theory that the money was "stolen" from borrowers in the first place. This Court therefore ordered Old Republic to produce redacted copies of the documents by this Thursday.

Unfortunately, the government has indicated that it intends to call Patricia LeVeck, one of the Old Republic witnesses responsible for decision-making related to the settlement funds, on Tuesday, before the key documents are due to be produced. The government may also plan to call Janet Frets, Lynn Levendowski, and/or Scott Smith—three key decision-makers—this week. Unfortunately, the government has declined to inform counsel of its intentions in this regard. But if defense counsel has not yet received or had time to review the redacted documents, counsel will not be able to conduct a complete and effective cross-examination of Old Republic witnesses on their handling of settlement proceeds and their decision to refund some, but not all, of the money the government alleges was stolen. Because Old Republic's conduct goes directly to the heart of the government's theory, if the government is allowed to call these witnesses before Mr. Kelley receives the redacted documents, these witnesses will all need to be recalled by Mr. Kelley at a later date, unnecessarily extending trial, and disrupting an effective presentation of the defense case.

Defense counsel has raised its concerns with the government and counsel for Old Republic. Declaration of Angelo J. Calfo, Exhibit 1. The government has declined defense

1 counsel's request to delay its presentation of witnesses to accommodate effective cross-
2 examination. Similarly, counsel for Old Republic has declined defense counsel's request for
3 an immediate production of all documents in redacted form, stating that his firm lacks the
4 resources to accomplish this task in the time frame requested. Old Republic's counsel did
5 indicate that Patty LeVeck is mentioned in only one of the documents due to be produced.
6 This document, which Old Republic's counsel helpfully produced, is attached as Exhibit to the
7 Declaration of Angelo J. Calfo. While defense counsel has no reason to doubt that Exhibit 2 is
8 the only document that mentions Ms. LeVeck, that document makes clear that Ms. LeVeck
9 was involved in the decision-making process related to refunds. Moreover, defense counsel
10 understands that Ms. LeVeck was involved in the handling and oversight of the settlement
11 funds. As such, any or all of documents concerning Old Republic's handling of the funds may
12 bear significantly on Ms. LeVeck's testimony. Defense counsel should therefore be given an
13 opportunity to review these documents before Ms. LeVeck—or other key Old Republic
14 decision-makers—testifies.

15 **III. CONCLUSION**

16 For the foregoing reasons, Troy Kelley respectfully requests this Court enter an order
17 delaying the government's presentation of Patty LeVeck, Lynn Levendowski, Janet Frets, or
18 Scott Smith until after production by Old Republic of documents relating to that decision.

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1 In the alternative, Mr. Kelley requests that this Court order Old Republic to produce the
2 redacted documents by Tuesday, March 22, 2016.

3 DATED this 21st day of March, 2016.

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